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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

29 PROTON ASSOCIATES LLC, and
30 SETH MILLER,

31 v.
32 Plaintiffs,

33 AVELO, INC.,

34 Defendant.

35 Case No. 2:25-cv-00856-CDS-BNW

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DECLARATION OF ALISSA THOMPSON
IN SUPPORT OF DEFENDANT AVELO,
INC.'S MOTION TO DISMISS COUNTS I
AND III OF THE FIRST AMENDED
COMPLAINT FOR LACK OF SUBJECT
MATTER JURISDICTION

44 I, Alissa Thompson, state the following:

45 1. I am over eighteen (18) years of age and am an attorney duly admitted to practice
46 before all State courts in the State of Wisconsin and am employed by Avelo, Inc. ("Avelo") as its
47 Director of Legal and Corporate Counsel. I am familiar with the scope of activities conducted by
48 Avelo and I have personal knowledge of all matters stated in this declaration. If called to testify, I
49 would competently testify to the same. I am the principal in-house attorney responsible for the
50 day-to-day management of Avelo's enforcement of its intellectual property rights, including its

1 litigation against Plaintiffs Proton Associates LLC and Seth Miller in the above-captioned lawsuit.

2 2. I make this declaration in support of Defendant Avelo Inc.'s Motion to Dismiss
3 Counts I and III of the First Amended Complaint for Lack of Subject Matter Jurisdiction.

4 3. Avelo owns federal and common law trademark rights in its AVELO word and
5 design marks, including United States Trademark Registration Number 6,910,702, registered
6 November 29, 2022, United States Trademark Registration Number 6,657,107, registered March 1,
7 2022, and United States Trademark Registration Number 7,072,450, registered June 6, 2023,
8 collectively hereinafter the "AVELO Marks".

9 4. In May, 2025, Avelo became aware that Plaintiffs were using images of its aircraft
10 as well as its federally registered trademarks and trade dress on billboards in the New Haven,
11 Connecticut, area to advertise and promote "the avelNO! campaign" and to direct people to the
12 <avelno.com> website where they are encouraged to cease doing business with Avelo and donate
13 money to Plaintiffs.

14 5. Believing in good faith that the images of Avelo's aircraft appearing on the
15 billboards and <avelno.com> were unauthorized copies of copyrighted images owned by Avelo,
16 believing Avelo's federally registered trademarks to be subject to protection against infringement
17 pursuant to Section 32 of the Lanham Act, and also believing Avelo's trademarks to be subject to
18 protection against dilution pursuant to Section 43(c) of the Lanham Act, I directed Avelo's outside
19 intellectual property counsel Andrew M. Smith, to send cease-and-desist letters to Plaintiffs and to
20 Lamar Advertising.

21 6. Upon information and belief, Mr. Smith drafted and sent cease-and-desist letters to
22 Plaintiffs and Lamar Advertising on May 9, 2025. Both letters requested a written response by
23 May 16, 2025.

24 7. Plaintiffs did not respond to either letter or request an extension of time to respond.
25 Instead, they filed this lawsuit on May 16, 2025.

26 8. Further research and investigation by Avelo has determined that the images of
27 Avelo's aircraft appearing on the billboards and <avelno.com> do not appear to be unauthorized
28 copies of copyrighted images owned by Avelo.

9. Further research and investigation by Avelo has also determined that the well-known AVELO mark and trade dress has not yet achieved the degree of nationwide fame required for Avelo assert a legally cognizable cause of action against Plaintiffs for trademark or trade dress dilution pursuant to Section 43(c) of the Lanham Act.

10. Therefore, Avelo does not intend to and will not be asserting causes of action against Plaintiffs for copyright infringement or trademark or trade dress dilution under either state or federal law, as these claims do not warrant the time and expense of further litigation.

11. Accordingly, Avelo has provided Plaintiffs with an irrevocable and unconditional covenant not to sue, a true and accurate copy of which is attached hereto as Exhibit A.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 9, 2025

/s/ Alissa Thompson
Director of Legal and Corporate Counsel
Avelo, Inc.